IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No.1103 of 2007.

Date of Decision: **August 2, 2007**.

Rajiv Sharma .....Petitioner.

Versus

State of Himachal Pradesh and others ……Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.
The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. A.K. Gupta, Advocate.

For the Respondents: Mr. M.S. Chandel, Advocate General with Mr. J.K. Verma, Dy. Advocate General for respondents No. 1 to 3.

Mr. V.D. Khidtta, Advocate, for respondent No.4.

V.K. Gupta, C. J. (Oral):

The only issue involved in this petition relates to the eligibility of the petitioner for being allowed to compete in the MBBS admission process based upon the petitioner's claim of belonging to a backward area in the State of Himachal Pradesh.

---

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

The petitioner had applied for admission in the MBBS course in the reserved category of belonging to a backward area. Three seats in IGMC, Shimla, two seats in Dr. RPGMC, Tanda and two seats in HP GDC in Shimla have been reserved for candidates belonging to backward areas. For eligibility to claim admission in the said category, the following criteria have been prescribed:-

> "**BACKWARD AREA SEATS IN MMBS/BDS** reserved for candidates belonging to backward areas as notified by the H.P. Govt. from time to time in the following manner:-
>
> (a) Candidates belonging to the backward area must be permanent resident of that particular backward area and must have passed atleast two examinations i.e. primary/ middle/ matric/ +1/+2 from the schools located in the backward area.
>
> (b) If no such candidate as per (a) is available then a candidate belonging to backward areas will be considered.
>
> (c) In case no such candidate is available for the backward area's seat, the same will go to general category candidate."

As far as the petitioner is concerned, he passed the primary and middle examinations from a backward area, namely, Government Primary School, Choori and Government Middle School, Choori but after passing his middle examination from this backward area he migrated/ shifted to Amritsar in the State of Punjab and passed all other examinations from Amritsar. The respondents held the petitioner

ineligible for being considered for admission in the aforesaid reserved category relying upon a specific, but general eligibility criterion as has been laid down and specified in Part IV of the Prospectus which reads thus:-

> " 1. Children of bonafide Himachali/ Himachal Govt. employees and employees of autonomous bodies wholly or partially financed by the Himachal Pradesh Government will only be eligible to apply for competing for admission to MBBS/BDS Courses through Entrance Test in Medical/ Dental colleges situated in Himachal Pradesh. They should have passed at least two of the following examinations from the recognized schools or colleges situated in the State of Himachal Pradesh and affiliated to ICSE/CBSE and H.P. Board of School Education or equivalent Boards/ Universities established by law in India..
>
> (a) Middle or equivalent
> (b) Matric or equivalent
> (c) 10+1 or equivalent
> (d) 10+2 or equivalent …."

Undoubtedly, the aforesaid specific, but general eligibility criterion contained in Part IV of the Prospectus does lay down that only such candidates shall be eligible to be admitted in the Course who have passed at least two of the examinations from out of the aforesaid four mentioned examinations.

The contention of Mr. A.K. Gupta, learned counsel appearing for the petitioner is that the aforesaid general eligibility criteria

cannot be held applicable in the case of the petitioner and that the petitioner is and should be exclusively held to be governed only by the criteria specifically prescribed for the backward area candidates viz. that he (the candidate) should have passed any two examinations, namely, Primary, Middle, Matric, or 10+1 or 10+2 in a school in a backward area, and since the petitioner, out of these five, indeed and in fact had passed two examinations, namely, Primary and Middle he should be held eligible. Mr. Gupta's contention is that the aforesaid general eligibility criterion contained in Part IV of the Prospectus applies only to the general category candidates and not to the reserved category candidates.

Article 14 of the Constitution of India strikes at arbitrariness. The State cannot be permitted to either act arbitrarily or discriminate against any candidate or class of candidates. Hostile discrimination against any candidate or class of candidates is strictly prohibited under Artilce 14 of the Constitution. On this touch stone we must proceed to examine whether on a combined reading of the aforesaid Part IV of the Prospectus and the specific prescription with respect to backward area candidates and by the process of harmonious construction, it can be said that the general eligibility criteria as contained in the aforesaid Part IV does not apply to reserved category candidates such as backward area candidates and that backward area candidates are exclusively governed by the aforesaid special prescription of passing any two examinations only from a backward area school.

By its very plain language the eligibility criteria contained in Part IV of the Prospectus is applicable to all the candidates aspiring for admission in the MBBS Course. It opens with the expression "Children of bonafide Himachali/ Himachal Government Employees ……." etc. Actually Para (3) of Part IV of the Prospectus makes it abundantly clear that the aforesaid eligibility criteria is general in nature, applies to all categories of candidates. We quote hereinbelow Para (3) which reads thus:-

> " 3. Following categories of candidates are exempted from the condition of passing the examinations from recognized schools affiliated to ICSE/CBSE/ HP Board of School Education situated in Himachal Pradesh provided that the candidates of these categories should be bonafide Himachali and their parents be living outside Himachal Pradesh on account of their service and in their case non-schooling in HP shall not debar them from competing against any of the seats whether reserved or otherwise (except backward area seats)"

Backward area seats have been excepted in the brackets used in Para (3) above which clearly means that even though the candidates mentioned in categories (i), (ii) and (iii) of Para 3 (supra) have been exempted from the requirement of having passed any examination from a school situated in Himachal Pradesh, candidates belonging to backward areas have not been granted such an exemption and understandably so if one looks at the specific categories of candidates mentioned in these three clauses, namely,

Children of Defence Personnel/ Ex-servicemen, children of Central Government Employees etc. or children of Himachal Government Employees etc. One can understand and appreciate the rational behind this exemption because the parents of these children owing to the requirements and contingencies of their service could be serving during the entirety of their service career outside the State of Himachal Pradesh and thus their children would be getting education in schools outside Himachal Pradesh even though they are bonafide Himachali or bonafide Himachal Government Employees etc. No such rational applies to the backward area candidates because by the very nature of the reservation extended to this category, the purpose is to help the students belonging to the backward areas in getting themselves promoted for higher education. A student who even though may physically or geographically be belonging to a backward area cannot be held to be entitled to the benefit of this reservation if he does not actually reside and thus study in these areas and actually and physically resides and thus studies in Cities and other urban areas having advanced benefits of excellent education facilities.

In our considered opinion therefore the requirement of the candidates belonging to backward areas having passed at least two examinations out of five as mentioned in para 3 (supra) from schools situated in backward areas is in addition to the requirement of such a candidate having passed at least two out of the four examinations mentioned in Part IV (supra). In effect and substance what it means is

that if a candidate, like the petitioner has passed two out of five examinations mentioned in Clause (3) (supra) the requirement of his passing two out of four examinations mentioned in Part IV (supra) does not get obliterated or dispensed with. Such a requirement continues to operate. This is in conformity with the spirit behind Article 14 of the Constitution and cannot in any manner be termed as being violative of this salutary Constitutional provision.

Since in the present case, the petitioner undoubtedly did not pass two examinations out of four examinations as prescribed in Part IV(supra) from out of Schools situated in the State of Himachal Pradesh, he was not eligible for being considered against a seat in the backward area category. The respondents have rightly rejected his candidature.

No interference is called for. The Petition is dismissed.

CMP No. 1839 of 2007.

Dismissed as infructuous, in view of the order passed in the main matter.

(V.K. Gupta), C.J.

August 2, 2007. **(Rajiv Sharma), J.**
(rks)